HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32(2) (b)
Description of Case

Writ Petition No. 1310 of 2003

Smt. Imarana …… Petitioner.

Versus

Ist A.D.J. and others …….. Petitioners.

Date of decision: 2, December 2004

For the approved of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1310 of 2003 (M/S)

Smt. Imrana
R/o Village-Khedi Sikohpur
Pargana-Bhagwanpur, Tehsil- Roorkee
District- Haridwar …….. Petitioner

Versus

1. First Additional District Judge
   Haridwar, District-Haridwar

2. Prescribed Authority/S.D.O. Roorkee
   District-Haridwar.

3. Smt. Gulzar
   W/o Ahmad Ali
   R/o House No. 1214, Village Chutamalpur
   District- Saharanpur

4. Smt. Firdosh
   W/o Shri Akhlakh
   And others …… Respondents

Mr. Lokpal Singh, learned counsel for the petitioners.
Mr. Manish Aroar, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 read with 227 of the Constitution of India, the petitioner has sought writ in the nature of certiorari for quashing impugned orders dated 03.07.2002 and 15.11.2003, passed by the respondents no. 2 and 1 respectively, whereby the election petition and the revision arising there of, have been

dismissed for non compliance of rule 3 of U.P. Panchayat Raj (Settlement of election disputes) Rule, 1994.

2) Brief facts of the case, as narrated in the petition, are that in the year 2000, an election of 'Pradhan' was held in Village Khedi Sikohpur, Block-Bhagwanpur, Tehsil-Roorkee, District-Haridwar, in which respondent no.3, Smt. Gulijar Bano was declared elected. Her election was challenged by respondent no.4, Smt. Fidosh, through election petition no. 13 of 2000 before Sub-Divisional Officer, Roorkee. The present petitioner was also respondent in said election petition. As per the provisions contained in rule 3 of U.P. Panchayat Raj (Settlement of election disputes) Rules, 1994 (for brevity hereinafter the Rules), a deposit of Rs. 50 as security is required to be deposited in the personal ledger account of Gaon Sabha, for maintaining a election petition, which according to the present petitioner was deposited on 12.07.2000 (copy of the treasury challan- Annexure 1 to the writ petition). It is alleged by the present petitioner that Smt. Firdosh, petitioner of the election petition, colluded with the elected Pradhan, Smt. Gulzar Bano on which on 27.11.2001, the present petitioner, moved an application for its transposition as election petitioner. On 12.12.2001 Smt. Gulzar Bano, the elected Pradhan (present respondent no. 3), moved an application in the election petition for dismissing the said petition on the ground that the petitioner of said case had not deposited Rs. 50 as security, in favour of Gaon Sabha, which was a mandatory requirement under the rules. Accepting the application of the winning candidate, the Prescribed Authority/Sub

Divisional officer, Roorkee, passed an order dated 03.07.2002 (copy Annexure 2 to the writ petition), dismissing the election petition on aforesaid technical ground and also on the ground that petitioner of said case is not turning up before the authority, Aggrieved by said order, the present petitioner preferred a revision no. 71 of 2002 under section 12 (c) (6) of U.P. Panchayat Raj Act, 1947, before the District Judge, Haridwar. The revision was disposed of by the respondent no. 1 (Additional District Judge, Haridwar), vide his judgment and order dated 15.11.2003 (copy annexure 3 to the writ petition), whereby he revision was also dismissed. Hence, this petition was filed.

3. A counter affidavit was filed by respondent no.3, Smt. Gulzar Bano in which she has admitted that she won election of Pradhan and election petition was filed against her election. However, she has denied if the deposit of Rs. 50 was made in the personal account of Gaon Sabha in compliance of the rules for maintaining the election petition. Defending the impugned order, the contesting respondents have stated that the election and revision were rightly dismissed by the respondents no. 1 and 2.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit along with the annexure annexed thereto.

5. The short question for consideration before this Court is, whether Rs. 50 was deposited as security with the election petition in question, as required under rule 3 of U.P. Panchayat Raj (Settlement of election disputes) Rules,

1994, and whether the impugned orders suffer from any illegality.

6. Admittedly, the election did take place in the year 2000 for the post of 'Pradhan' in Village Khedi Sikohpur, Block-Bhagwarnpur, Tehsil-Roorkee, District-Haridwar. It is also not in dispute that Smt. Gulzar Bano, respondent no. 3 was declared elected by the Election Officer. The point of dispute is that whether the compliance of rule 3 of the Rules was made for maintaining the election petition no. 13 of 2000, challenging the election of Smt. Gulzar Bano. Before further discussions, it is pertinent to quote rule 3 of the aforesaid rules, which reads as udner:-

*"**Election petition-**(1) An application under sub-section (1) of Section 12-C of he Act shall be presented before the Sub-Division Officer, within whose jurisdiction the concerned Gram Panchayat lies, within ninety days after the day on which the result of the election questioned is announced and shall specify the ground or grounds on which the election of the respondent is questioned and contain a summary of the circumstances alleged to justify the election being questioned on such ground:*

Provided that no such application shall be entertained unless it is accompanied by a treasury challan to show that the amount of rupees fifty has been deposited in the Personal Ledger Account of gram Panchayat concerned as security.

(2) The person whose election is questioned and where the petition claims that the petitioner or any other candidates shall be declared elected in place of such person, every

unsuccessful candidate shall be made a respondent to the application.

(3) Every respondent may give evidence to prove that any person in respect of whom a claim is made that such person be declared elected, should not be declared so elected on the same ground or ground on which his election could have been questioned if he had been elected."

Perusal of the impugned order dated 03.07.2002 (copy Annexure-2 to the writ petition), passed by the Sub Divisional Officer, shows that the said authority dismissed the election petition on the two grounds:-

i) The petitioner was absenting herself for several dates, and

ii) The petitioner had not deposited Rs. 50 as security in the personal account of Gaon Sabha as required under the rules.

Another impugned order dated 15.11.2003, passed by the appellate authority (respondent no.1), shows that the revisional authority was in agreement with the prescribed authority/Sub Divisional Officer, and it also held that the compliance of rules 3 of the Rules was not made for maintaining the election petition.

7. Learned counsel for the petitioner, drew my attention to the copy of the Challan (copy Annexure-1 to the writ petition) and argued that both the parties below have erred in law in holding that Rs. 50 was not deposited with the election petition. I, closely perused page 11, i.e. photocopy of the challan, produced before this Court. The said copy of the Challan, shows, that the deposit has been

made on behalf of Smt. Firdosh of Rs. 50 on 12.07.2000, in favour of Pradhan Gaon Sabha, village Khedi Sikohpur under the head 8443 as security. Learned Prescribed Authority/Sub Divisional Officer, Roorkee has not treated it to be a valid deposit on the ground that said deposit has been made under a wrong head. Learned revisional court has rejected the deposit, made by the aforesaid Challan on the ground that the same is not made in the personal ledger account of Gaon Sabha for the reason that no account number has been mentioned. Learned counsel for the petitioner, drew my attention to the principle of law laid down in Yashwant Singh Yadav Vs. Prescribed Authority 1997 (88), Revenue Decisions, pg. 380 and argued that mere the reason that personal ledger account is not mentioned in the Challan, is not fatal for the election petition. Relevant portion in said judgment of Yashwant Singh Yadav case reads as under: -

"In my opinion, the security deposit of Rs. 50 in the Gaon fund account no.8443, is security amount for the purposes of election petition, would be understood to be a deposit in the Personal Ledger Account of Gram Panchayat concerned there is nothing to indicate that account no. 8443 mentioned in the treasury challan is not Personal ledger Account of Gram Panchayat concerned. Mere fact that the expression "Personal Ledger Account" is not prefixed to to figure "8443" in treasury Challan, would not be fatal and would not lead to non compliance of the requirement of the rules 3 and 4 of the Rules afore stated Particularly against the purpose of the deposit is unambiguously mentioned therein."

Facts of the present case are squarely covered under the aforesaid case law, as here also the deposit was made under the same head, mentioning the name of the Gaon Sabha without the details relating to personal account number. As such, this Court is in agreement with the submission of learned counsel for the petitioner and fees that respondents no.1 and 2 have erred in law by not accepting the deposit as valid deposit and preferred to throw the election petition on the technical ground.

8. But the story does not come to an end here. The impugned order dated 03.07.2002, shows that the election petition was dismissed also on the ground that the petitioner of the election petition was absenting herself through out for several dates. As such, though even after coming to the conclusion that the respondent no. 1 and 2 has erred in accepting the deposit of security as not a valid deposit, it cannot be said that the election petition was wrongly dismissed by the prescribed authority on another ground i.e. the default of the petitioner. The original petitioner did not challenge the orders in revision. Shri Lok Pal Singh, learned counsel for the present petitioner, drew attention of this Court to the provisions contained in sub-section (6) of section 12 of U.P. Panchayat Raj Act, 1947 and submitted that the present petitioner can maintain the election petition as she is aggrieved by the impugned order. Here , it is pertinent to quote the said sub-section, which reads as under:

"(6) Any party aggrieved by an order of the prescribed authority upon an applicant under sub-section (1) may,

within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more of the following grounds, namely-

(a) that the prescribed authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercised of its jurisdiction illegally or with material irregularity."

Since in the election petition, no remedy had been sought by Smt. Imrana, who was one of the respondent in the election petition as such she cannot be said to be aggrieved party as such the revision before the District Judge (which was entertained by him) was not maintainable on her behalf. Learned counsel for the petitioner, argued that the Smt. Firdosh (now respondent no.4) who was petitioner in the election petition, colluded with Smt. Gulzar Bano (respondent no.3) the declared elected Pradhan, as such Smt. Imrana, present petitioner (who was also a lost candidate with the original election petitioner) can be said to be a aggrieved party. I am unable to accept the contention for the reason that litigation of election petition is not a relay litigation and any one cannot be permitted to step into the shoes of the petitioner, without the consent of the original petitioner because it is the petitioner who is dominus- litis.

9. In view of the above discussion, this Court is not inclined to interfere with the impugned orders on even after coming to the conclusion that the respondent no.1 and 2 have erred in law in not treating the security deposit as valid deposit as it does not affect the materially fate of the election petition for the original election petitioner herself got absented on the dates fixed and election petition which was dismissed on said ground also. Accordingly, the writ petition is dismissed. No order as to cots.

(Prafulla, C. Pant, J.)

Dt: December 2, 2004.
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